SEYFARTH, SHAW, FAIRWEATHER & GERALDSON ATTORNEYS AT LAW

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WRITER'S DIRECT DIAL

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AUG 23 1991 -1 55 PM

INTERSTATE COMMERCE COMMISSION

August 23, 1991

INTERNATIONAL

AVENUE LOUISE 500, BOÎTE 8 1050 BRUSSELS, BELGIUM TELEPHONE (32) (2) 647.60.25 FAX (32) (2) 640.70.71

AFFILIATE FIRMS

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FIRST FILIWG 1-235A008

\$15.00 feling fee

Mr. Sidney L. Strickland Secretary Interstate Commerce Commission Room 2303 12th & Constitution, N.W. Washington, D.C. 20423 Mildred R. Lee/DOCUMENTS FOR RECORDATION

Dear Mr. Strickland:

Tous humber The undersigned is an attorney representing a party to the enclosed document. I have enclosed originals and certified copies of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the United States Code and the regulations adopted thereto.

> The enclosed document is a Railcar Lease Agreement, a primary document, dated July 31, 1991.

> The names and addresses of the parties to the document are as follows:

Lessor:

The CIT Group/Equipment Financing, Inc.

270 Park Avenue

New York, New York 10017

Lessee:

Bethlehem Steel Corporation Bethlehem, Pennsylvania

HOTOR OPERATING UNII

Page Two

Mr. Sidney L. Strickland

August 23, 1991

A description of the equipment covered by the document follows:

230 open top hopper railroad cars and 240 open top coal gondola railroad cars having the following running marks and numbers:

MCHX 30575-31044, inclusive.

A fee of \$15.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation and the enclosed copy of this letter, each stamped with your recordation number to the bearer of this letter.

A short summary of the document to appear in the index follows:

Railcar Lease Agreement between Bethlehem Steel Corporation, Bethlehem, Pennsylvania and The CIT Group/Equipment Financing, Inc., New York, New York, dated July 31, 1991, and covering 230 open top hopper railroad cars and 240 open top coal gondola railroad cars.

Very truly yours,

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON

By

Richard Demarest Yant

RDY: 1m

Interstate Commerce Commission

Washington, **B.C.** 20423

8/23/91

OFFICE OF THE SECRETARY

Richard Demarest Yant Seyfarth, Shaw, Fairweather & Geraldson 55 East Monroe Street-Ste.4200 Chicago, Illinois 60603-5803

Dear Sirs:

The enclosed dcoument(s) was recorded pursuant to the provisions of Section 11303 of the Insterstate Commerce Act, 49 U.S.C. 11303, on at 1:55PM , and assigned 8/23/91 recordation number(s). 17491, 17492 and 17493.

Sincerely yours,

Sidney/L. Strickland, Jr.

Secretary

1 1 E

AUG 23 1991 -1 55 PM RAILCAR LEASE AGREEMENT

This RAILCAR LEASE AGREEMENT, dated as of July 31, 1991, is entered into by and between THE CIT GROUP/EQUIPMENT FINANCING, INC., a New York corporation ("Lessor"), and BETHLEHEM STEEL CORPORATION, a Delaware corporation ("Lessee").

1. Lease.

Pursuant to the terms and conditions of this Railcar Lease Agreement ("Lease"), Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor hereunder, those units of railroad rolling stock which are specifically described on the schedule attached hereto as Exhibit A for which Lessee shall execute an Equipment Supplement and Acceptance Certificate in the form attached hereto as Exhibit B ("Supplement"), together with all attachments, additions, accessories, appliances, replacement parts, substitutions and repairs attached thereto or incorporated therein (referred to herein collectively as the "Equipment" or individually as a "Unit"). Lessee's execution and delivery to Lessor of a Supplement with respect to any Unit shall constitute Lessee's irrevocable acceptance of such Unit for all purposes of this Lease. Receipt of a Supplement shall be a condition to any obligation of Lessor to acquire and lease to Lessee any Unit. Lessor shall acquire the Equipment and lease the Equipment to Lessee in no more than three groups with closings to occur on no more than three occasions.

Each Supplement shall be executed and all Equipment subjected to this Lease on or before March 31, 1992. Lessor shall have no obligation after such date to purchase or commence the lease of any Equipment. Each Supplement shall cover Units having a total Lessor's Cost (as hereinafter defined) of not less than \$5,000,000.

- The total Lessor's Cost of all Units leased pursuant hereto shall not exceed \$23,908,010.60.
- (c) Except as provided in the Purchase Order Agreement covering the Equipment, Lessee shall be responsible for arranging transportation and all costs of delivery of each Unit, and Lessor shall have no responsibility or obligation whatsoever with respect to such arrangement.

2. Definitions.

(a) As used in this Lease, the following terms shall have the following meanings (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

"AAR" shall mean the Association of American Railroads.

"BN" shall mean Burlington Northern Railroad Company

"BN Service Agreement" shall mean the Maintenance and Service Agreement between BN and Lessee in form attached hereto as Exhibit D.

"BN Sublease" shall mean the sublease to Burlington Northern Railroad Company in form attached hereto as Exhibit C.

"Business Day" shall mean a day other than a Saturday, Sunday or legal holiday under the laws of the State of New York.

"Commencement Date" as defined in Section 3 hereof.

"Default" shall mean any event or condition which after the giving of notice or lapse of time or both would become an Event of Default.

"Equipment" as defined in Subsection 1(a) hereof.

"Event of Default" as defined in Section 17 hereof.

"Event of Loss" with respect to any Unit means any of the following events: (i) a Unit shall be or become lost, stolen, destroyed, or, irreparably damaged (as provided under Rule 107 of the AAR), from any cause whatsoever during the Term hereof or until the Unit is returned pursuant to the Lease, or during any storage period, or (ii) title to the Unit shall be taken by any governmental entity by condemnation or otherwise, or (iii) use of the Unit shall be taken or requisitioned (a) by condemnation or otherwise resulting in loss of possession by the Lessee for 180 consecutive days or (b) by the United States Government for a period which equals or exceeds or is expected to equal or exceed the then remaining term of the Lease, or (iv) as a result of any rule, regulation, order or other action by the U.S. government or any agency or instrumentality thereof, for which the use of such Unit in the normal course of interstate rail transportation and unrestricted interchange shall have been prohibited for a continuous period of six months.

"Fair Market Sale Value" shall, at any time with respect to any Unit, be equal to the sale value of such Unit which would be obtained in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy.

For purposes of Subsection 18(c) hereof, Fair Market Sale Value shall be determined (at Lessee's expense) by an independent appraiser selected by Lessor, on an "as-is, where-is" basis; provided, that, if Lessor shall have sold any Unit pursuant to Subsection 18(b) hereof prior to giving the notice referred to in Subsection 18(c) hereof, Fair Market Sale Value of such Unit shall be the net proceeds of such sale after deduction of all costs and expenses incurred by Lessor in connection therewith; provided, further, that if for any reason Lessor is not able to obtain possession of any item of Equipment

pursuant to Subsection 18(a) hereof, the Fair Market Sale Value of such item of Equipment shall be zero.

"FRA" shall mean the Federal Railroad Administration.

"ICC" shall mean Interstate Commerce Commission.

"Indemnitee" as defined in Section 16 hereof.

"Late Charge Rate" shall mean an interest rate per annum equal to the higher of two percent (2%) over the Reference Rate or eighteen percent (18%), but not to exceed the highest rate permitted by applicable law.

"Lease" and the terms "this Lease Agreement", "this Lease", "hereof", "herein," "hereto" and "hereunder," when used in this Railcar Lease Agreement, shall mean and include this Railcar Lease Agreement and each Supplement and amendment hereto, as the same may from time to time be amended, modified or supplemented.

"Lease Loss" as defined in Section 25.

"Lease Term" shall mean, with respect to any Unit, the term of the lease of such Unit hereunder specified in Section 3 hereof.

"<u>Lessee</u>" as defined in the introductory paragraph to this Lease.

"Lessor" as defined in the introductory paragraph to this Lease.

"Lessor's Cost" shall mean, with respect to any Unit, the total amount paid by Lessor for such Unit, which amount is set forth in the Supplement pertaining to such Unit, which amount shall include certain expenses relating to the Equipment.

"Lessor's Lien" shall mean any mortgage, pledge, lien, security interest, charge, encumbrance, financing statement, title retention or any other right or claim of any person claiming through or under Lessor, not based upon or relating to ownership of the Equipment or the lease thereof hereunder.

"Lien" shall mean any mortgage, pledge, lien, security interest, charge, encumbrance, financing statement, title retention or any other right or claim of any person, other than any Lessor's Lien.

"Loss Payment Date" shall mean, with respect to any Unit, the earlier of (a) receipt of settlement from BN as handling carrier or (b) the expiration or earlier termination of the Lease Term.

"Permitted Lien" shall mean taxes not yet due and payable or contested in good faith and by appropriate proceedings, so long as such proceedings do not involve any material danger of the sale, forfeiture or loss of the Equipment, title thereto, or any interest therein, and liens for wages and suppliers to be paid in the normal course all of which will be discharged by Lessee, the BN Sublease, the Collateral Assignment and Security Agreement and the Remarketing Agreement.

"Reference Rate" shall mean the rate publicly announced from time to time as the reference rate of Manufacturers Hanover Trust Company or its successor entity ("MHT"); the Reference Rate shall be determined by Lessor at the close of business on each Business Day. The Reference Rate is not intended to be the lowest rate of interest charged by MHT in connection with extensions of credit to debtors.

"Remarketing Agreement" shall mean that certain Remarketing Agreement by and between TLC and Lessor, dated as of July 31, 1991.

"Rent Payment Date" shall mean each date on which an installment of rent is due and payable pursuant to Section 4 hereof.

"Service Subcontract" shall mean the Maintenance and Service Agreement between Lessee and TLC in Form attached hereto as Exhibit E

"Stipulated Loss Value" shall mean, with respect to any Unit, the amount determined by multiplying the Lessor's Cost of such Unit by the percentage set forth in Schedule 2 to the applicable Supplement opposite the Applicable Rent Payment Date, provided, that for purposes of Subsections 15(b), 18(c) and 18(d) hereof, any determination of Stipulated Loss Value as of a date occurring after the final Rent Payment Date with respect to such Unit of Equipment, shall be made as of such final Rent Payment Date.

"Sublease" shall mean a sublease, license or any other arrangement for the use of any Unit by any person or entity (except by participating rail carriers in the ordinary course of interchange) other than Lessee.

"Total Consideration" shall mean the net amount realized by Lessor upon a sale of the Equipment or in case of a subsequent lease or installment sale transaction of the Equipment, the higher of (a) the value that Lessor places on such transaction using its then current method of valuing similar transactions or (b) the price offered by a bona fide unrelated third party that is ready, willing and able, in Lessor's reasonable judgment, to acquire such transaction and the Equipment. Provided, however, that in the event Lessor refuses a transaction with a willing and able lessee or buyer brought to it by TLC within the Term (as defined in the Remarketing Agreement), the "Total

Consideration" shall mean the "Total Consideration" that would have been realized had such transaction been consummated by Lessor.

"TLC" shall mean Transcisco Leasing Company, a Delaware corporation or another entity with the ability to perform the obligations contained in the Service Subcontract and is acceptable to Lessor in its sole discretion.

"Treasury Rate" shall mean the rate per annum equal to the yield to maturity for one year United States Treasury securities as reported by Telerate Systems Incorporated on the close of business on the Commencement Date.

"Unamortized Balance" shall mean, with respect to any Unit, the Lessor's Cost for such Unit reduced from month to month during the Lease Term by the amount by which scheduled rent payments and Stipulated Loss Value (or if higher the casualty value pursuant to Subsection 15(b) herein, to the extent received) payments received by Lessor from Lessee exceed an imputed interest factor equal to the Treasury Rate plus 4.65% per annum applied to the Unamortized Balance from time to time (the "Interest Factor") and increased from month to month during the Lease Term by the amount by which the Interest Factor exceeds the scheduled rent payments and Stipulated Loss Value (or if higher the casualty value pursuant to Subsection 15(b) herein, to the extent received) payments received by Lessor from Lessee.

- (b) All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.
- 3. Term. The term of the lease of each Unit hereunder shall commence on the Commencement Date specified in the Supplement pertaining thereto (the "Commencement Date") and, unless earlier terminated pursuant to the provisions hereof, shall continue for a term expiring six (6) months following the end of the calendar month in which the initial term of the BN Sublease expires.

4. Rent; Unconditional Obligations.

- (a) Lessee shall pay to Lessor rent for each Unit in consecutive monthly installments, with the first installment of rent with respect to such Unit of Equipment being due thirty days after the Commencement Date with respect to such Unit and succeeding installments being due on the same date of each month thereafter. Each installment of rent with respect to the Equipment specified shall be payable at such address as Lessor may designate and shall be in the amount provided in the applicable Supplement.
- (b) Lessee shall also pay to Lessor, on demand, interest at the Late Charge Rate on any installment of rent and on any other amount owing hereunder which is not paid when due, for any

period for which the same shall be overdue. Each payment made under this Lease shall be applied first to the payment of interest then owing and then to rent or other amounts owing hereunder. Interest shall be computed on the basis of a 360-day year and actual days elapsed. Notwithstanding the foregoing, however, no Late Charge Rate will apply to past due scheduled rent until the sixth day after the date due on the first two instances scheduled rent is late.

- (c) This Lease is a net lease, and Lessee's obligation to pay all rent and all other amounts payable hereunder (except for portion of rent identified in the Supplement as nonrecourse rent) is ABSOLUTE AND UNCONDITIONAL under any and all circumstances and shall not be affected by any circumstances of any character whatsoever, including, without limitation, (i) any setoff, counterclaim, recoupment, defense, abatement or reduction or any right which Lessee may have against Lessor, the manufacturer or supplier of any of the Equipment or anyone else for any reason whatsoever; (ii) any defect in the title, condition, design or operation of or lack of fitness for use of, or any damage to, or loss of, all or any part of the Equipment from any cause whatsoever; (iii) the existence of any Liens with respect to the Equipment; (iv) the invalidity, unenforceability or disaffirmance of this Lease or any other document related hereto; or (v) the prohibition of or interference with the use or possession by Lessee of all or any part of the Equipment, for any reason whatsoever, including, without limitation, by reason of (1) claims for patent, trademark or copyright infringement; (2) present or future governmental laws, rules or orders; (3) the insolvency, bankruptcy or reorganization of any person; and (4) any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which may at any time hereafter be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any Equipment. Except as otherwise expressly provided herein, if for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise, Lessee will nonetheless pay to Lessor an amount equal to each installment of rent at the time such installment would have become due and payable in accordance with the terms hereof. Each payment of rent or other amount paid by Lessee hereunder shall be final and Lessee will not seek to recover all or any part of such payment from Lessor for any reason whatsoever.
 - 5. <u>Disclaimer: Assignment of Warranties</u>.
- (a) LESSOR NEITHER MAKES NOR SHALL BE DEEMED TO HAVE MADE AND LESSEE HEREBY EXPRESSLY WAIVES ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO THE DESIGN, QUALITY OR CONDITION OF THE EQUIPMENT OR ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR

ANY PARTICULAR PURPOSE OR AS TO THE TITLE TO OR LESSOR'S OR LESSEE'S INTEREST IN THE EQUIPMENT OR AS TO ANY PATENT, TRADEMARK OR COPYRIGHT OWNERSHIP OR INFRINGEMENT OR AS TO ANY OTHER MATTER RELATING TO THE EQUIPMENT OR ANY PART THEREOF.

LESSEE CONFIRMS THAT IT HAS SELECTED THE EQUIPMENT AND EACH PART THEREOF ON THE BASIS OF ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS RELIANCE UPON ANY STATEMENTS, REPRESENTATIONS OR WARRANTIES MADE BY LESSOR, AND LESSEE ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER OR VENDOR OF ANY PART OF THE EQUIPMENT.

LESSOR NEITHER MAKES NOR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE ACCOUNTING TREATMENT TO BE ACCORDED TO THE TRANSACTIONS CONTEMPLATED BY THIS LEASE OR AS TO ANY TAX CONSEQUENCES AND/OR TAX TREATMENT THEREOF.

- (b) Lessor hereby assigns to Lessee such rights as Lessor may have (to the extent Lessor may validly assign such rights) under all manufacturers' and suppliers' warranties with respect to the Equipment; provided, however, that the foregoing rights shall automatically revert to Lessor upon the occurrence and during the continuance of any Event of Default hereunder, or upon the return of the Equipment to Lessor. Lessee agrees to settle all claims with respect to the Equipment directly with the manufacturers or suppliers thereof, and to give Lessor prompt notice of any such settlement and the details of such settlement.
- 6. Return. Upon the expiration of the Lease Term, Lessee shall, subject to Lessee's maintenance obligations, return the Equipment to Lessor at a point or points designated by Lessor, in the same or as good condition as received, ordinary wear and tear excepted, fit and suitable for interchange service, free and clear from all accumulations or deposits from commodities transported in or on the Equipment while in the service of Lessee. If any Unit is not returned to Lessor free from such accumulations or deposits, Lessee shall reimburse Lessor for any expense incurred in cleaning such Unit.
- 7. Representations and Warranties. In order to induce Lessor to enter into this Lease and to lease the Equipment to Lessee hereunder, Lessee hereby represents and warrants that:
- (a) Organization. Lessee is duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business and is in good standing in every jurisdiction in which the nature of its activities requires such qualification.
- (b) <u>Power and Authority</u>. Lessee has full corporate power, authority and legal right to execute, deliver and perform this Lease, and the execution, delivery and performance hereof

has been duly authorized by all necessary corporate action of Lessee.

- (c) Enforceability. This Lease has been duly executed and delivered by Lessee and constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms, subject only to bankruptcy and insolvency laws and laws dealing generally with the rights of creditors.
- (d) Consents and Permits. The execution, delivery and performance of this Lease does not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of Lessee, and will not contravene any law, regulation, judgment or decree applicable to Lessee, or the certificate of incorporation or bylaws of Lessee, or contravene the provisions of, or constitute a default under, or result in the creation of any Lien upon any property of Lessee under any mortgage, instrument or other agreement to which Lessee is a party or by which Lessee or its assets may be bound or affected; and no authorization, approval, license, filing or registration with any court or governmental agency or instrumentality is necessary in connection with the execution, delivery, performance, validity and enforceability of this Lease except pursuant to 49 U.S.C. § 11303.
- (e) No Defaults. Lessee is not in default, and no event or condition exists which after the giving of notice or lapse of time or both would constitute an event of default, under any material mortgage, indenture, contract, agreement, judgment or other undertaking to which Lessee is a party or which purports to be binding upon Lessee or upon any of the assets of Lessee, except for any such default, event or condition which, individually or in the aggregate, would not affect Lessee's ability to perform its obligations under this Lease.
- (f) <u>Title to Equipment</u>. On the Commencement Date for each Unit, Lessor shall have good and marketable title to such Unit being subjected to this Lease on such date, free and clear of all Liens other than this Lease and Permitted Liens.
- (g) No Litigation. There is no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or threatened against or affecting Lessee (A) which involves the Equipment or the transactions contemplated by this Lease; or (B) which, if adversely determined, would have an adverse effect on the Lessee's ability to perform this Lease.
- (h) <u>Financial Condition</u>. The 1990 Form 10K and the first quarter 1991 Form 10Q heretofore furnished to Lessor are prepared in accordance with generally accepted accounting principles and present the financial condition of such entities and the results of their operations for the respective period

covered thereby, there are no known contingent liabilities or liabilities for taxes of such entities which are not reflected in said financial statements which would have an adverse affect on Lessee's ability to perform this Lease.

- (i) <u>Chief Executive Office; Name Change</u>. Lessee's chief executive office is located at Bethlehem, Pennsylvania. Lessee has not changed its name in the last five (5) years.
- 8. <u>Liens</u>. (a) Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to the Equipment except for Permitted Liens.
- (b) Lessee shall be permitted to sublease any of the Units to a for-profit, taxable corporation or partnership organized in any state of the United States or the District of Columbia and engaged in business in the United States under an agreement in form satisfactory to Lessor if, and only if, Lessor has given its prior written consent. Lessor will not unreasonably withhold its consent if the following conditions are met:
 - (i) the term of the Sublease, including all options to extend, shall not extend beyond the expiration of the Lease Term;
 - (ii) the Sublease shall prohibit use of any Unit outside the continental United States;
 - (iii) the Sublease shall prohibit use of any Unit for carrying any commodity other than coal, and shall specifically exclude use for any hazardous materials, substances, wastes or commodities;
 - (iv) any Sublease executed after the Commencement Date shall be specifically subject and subordinate to this Lease:
 - (v) immediately upon execution of any Sublease, Lessee will execute and deliver to Lessor and, if requested by Lessor, file with ICC an Assignment of Lease in form and substance satisfactory to Lessor, specifically identifying such Sublease.
- 9. <u>Insurance</u>. Lessee or any sublessee shall maintain or cause to be maintained at all times on the Equipment, at its expense, "all-risk" physical damage insurance and comprehensive general liability insurance (covering bodily injury and property damage, including, but not limited to, contractual liability and products liability) in such amounts, against such risks, in such form and with such insurers as shall be satisfactory to Lessor (such insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with regard to the limits of liability); provided, that the amount of "all-risk" physical damage insurance shall not on any date be less than the Stipulated Loss Value of the Equipment as of such

date and further provided that the comprehensive general liability insurance shall have a minimum combined single limit of liability of \$5,000,000. Such insurance policy will, among other things, name Lessor as an additional insured or as loss payee (as the case may be), require that the insurer give Lessor at least thirty (30) days prior written notice (at the address for notice to Lessor set forth in Section 24 hereof) of any alteration in or cancellation of the terms of such policy, and require that the interests of Lessor be continually insured regardless of any breach of or violation by Lessee of any warranties, declarations or conditions contained in such insurance policy. Lessee or any Sublessee, upon approval by Lessor (which Lessor may deny in its reasonable discretion), given to Lessee, shall have the right to self-insure for all or a portion of the required physical damage insurance under this section and/or any portion of the required comprehensive general liability insurance required under this section. Lessor shall condition its approval of such self-insurance upon, among other things, no Default hereunder and no adverse change in such Sublessee's business or financial condition during such period of self-insurance. In addition, Lessee shall maintain physical damage insurance in amounts such that at all times each Unit will be covered by comprehensive general liability and physical damage insurance in amounts and with such conditions as required in this section. Should any sublessee fail to meet Lessor's insurance requirements, Lessee shall purchase insurance directly or on a contingent basis sufficient to cover the shortfall or In no event shall Lessor be responsible for deficiency. premiums, warranties or representations to any insurer or agent thereof. At Lessor's option, Lessee or any sublessee shall furnish to Lessor a certificate of insurance or other evidence satisfactory to Lessor that such insurance coverage is in effect, provided, however, that Lessor shall be under no duty to ascertain the existence or adequacy of such insurance. insurance maintained by Lessee or any sublessee shall be without any right of contribution from insurance which may be maintained by Lessor. The obligations of Lessee or any sublessee under this Section shall be independent of all other terms under this Lease and shall in no event relieve Lessee from any indemnity obligation hereunder.

10. General Tax Indemnity. Lessee hereby agrees to pay and to indemnify and hold Lessor harmless from and against, all fees, taxes (whether sales, use, excise, personal property or other taxes), imposts, duties, withholdings, assessments and other governmental charges of whatever kind or character, however designated (together with any penalties, fines or interest thereon), all of the foregoing being herein collectively called "Impositions", which are at any time levied or imposed against Lessor, Lessee, this Lease, the Equipment or any Unit or part thereof by any federal, state or local government or taxing authority in the United States or by any foreign government or any subdivision or taxing authority thereof upon, with respect to, as a result of or measured by (i)

the Equipment (or any Unit or part thereof), or this Lease or the interest of the Lessor therein; or (ii) the purchase, ownership, delivery, leasing, possession, maintenance, use, operation, return, sale or other disposition of the Equipment or any part thereof; or (iii) the rentals, receipts or earnings payable under this Lease or otherwise arising from the Equipment or any part thereof; excluding, however, taxes based on or measured by the net income of Lessor that are imposed by (1) the United States of America, or (2) any State of the United States of America or any political subdivision of any such state in which Lessor is subject to Impositions as the result (whether solely or in part) of business or transactions unrelated to this Lessee shall pay the Impositions when due. In case any Lease. report or return is required to be filed with respect to any obligation of Lessee under this Section 10 or arising out of this Section 10, Lessee shall make such report or return in such manner as will show the ownership of the Equipment in Lessor. The obligations of Lessee under this Section 10 shall survive the expiration or earlier termination of this Lease.

- 11. Compliance with Laws; Operation and Maintenance; Additions.
- Lessee will comply with and conform to all governmental laws, rules and regulations and industry association rules and regulations to which a user must adhere relating to the Equipment, and will cause the Equipment to be operated in accordance with the manufacturer's or supplier's instructions or manuals (if any). Without limitation to the foregoing, Lessee will (i) cause the Equipment to be used in compliance with all rules of AAR and FRA and every other federal, state, provincial and governmental or nongovernmental agency or association having jurisdiction over the condition, maintenance, repair or safety of any Unit; (ii) not permit any Unit to be loaded with any commodity other than coal and in no event will any hazardous material, hazardous commodity, hazardous waste or hazardous substance be loaded in any Unit; and (iii) not permit any Unit to be used outside the continental United States.
- (b) Lessee will, at its own expense, keep and maintain the Equipment in good repair, condition and working order and furnish all parts, replacements, mechanisms, devices and servicing required therefor so that the value, condition and operating efficiency thereof will at all times be maintained and preserved, reasonable wear and tear excepted. Lessee will cause each Unit to be maintained in conformance with all rules and regulations of AAR and FRA and every other federal, state, provincial and governmental or nongovernmental agency or association having jurisdiction over the condition, maintenance, repair or safety of any Unit, and, if mandated, modified so that

it will qualify for unrestricted interchange in the United States and Canada and remain suitable for loading, transporting and unloading coal. All such repairs, parts, mechanisms, devices, replacements and modifications shall immediately, without further act, become the property of Lessor and part of the Equipment.

- (c) Lessee will not make or authorize any improvement, change, addition or alteration to the Equipment (i) if such improvement, change, addition or alteration will impair the originally intended function or use of the Equipment or impair the value of the Equipment as it existed immediately prior to such improvement, change, addition or alteration; or (ii) if any parts installed in or attached to or otherwise becoming a part of the Equipment as a result of any such improvement, change, addition or alteration shall not be readily removable without damage to the Equipment (unless such improvement is mandated by AAR, FRA or other agency or organization having jurisdiction over the Equipment). All such parts shall be and remain free and clear of any Liens. Any such part attached to any Unit shall, without further act, become the property of Lessor.
- 12. <u>Inspection</u>. Lessee will at all times when requested by Lessor cooperate with and assist Lessor in locating and gaining access to the Equipment and the books and records relating thereto. Except during the existence of a Default or Event of Default, such inspection shall be at Lessor's cost.
- 13. <u>Identification</u>. Lessee shall, at its own expense, attach to and cause to be maintained on each Unit a notice satisfactory to Lessor disclosing Lessor's ownership of such Unit. The following notice will be satisfactory if stenciled or contained in a placard attached to each side of each Unit in letters having a height of one inch or more and continually legible:

SUBJECT TO LEASE OR SECURITY INTEREST FILED WITH THE U.S. INTERSTATE COMMERCE COMMISSION.

14. [INTENTIONALLY OMITTED]

15. Loss or Damage.

(a) All risk of loss, theft, damage or destruction to the Equipment or any part or Unit thereof, however incurred or occasioned, shall be borne by Lessee and, unless such occurrence constitutes an Event of Loss pursuant to Subsection (b) of this Section 15, Lessee shall promptly give Lessor written notice thereof and shall promptly cause the affected part or parts of any Unit to be replaced or restored to the condition and repair required to be maintained by Section 11 hereof.

- If an Event of Loss with respect to any Unit shall occur, Lessee shall promptly give Lessor written notice thereof, and Lessee shall pay to Lessor on or before the next Loss Payment Date an amount equal to the sum of (i) the higher of (x) the Stipulated Loss Value of such Unit computed as of the Rent Payment Date with respect to such Unit on the Loss Payment Date or (y) the casualty value actually received by Lessee from BN or a handling carrier; and (ii) all rent and other amounts due and owing hereunder for such Unit on or prior to the Loss Payment Upon payment of such amount to Lessor, the lease of such Unit hereunder shall terminate, and Lessor will transfer to Lessee Lessor's right, title and interest in and to such Unit, on an "as-is, where-is" basis, without recourse and without representation or warranty, express or implied, other than a representation and warranty that such Unit is free and clear of any Lessor's Liens.
- (c) Any payments received at any time by Lessor or Lessee from any insurer or railroad with respect to loss or damage to Unit shall be applied as follows: (i) if such payments are received with respect to an Event of Loss they shall be paid to Lessor, but to the extent received by Lessor, they shall reduce or discharge, as the case may be, Lessee's obligation to pay the amounts due to Lessor under Subsection 15(b) hereof with respect to such Event of Loss and any excess over the Stipulated Loss Value will be paid to Lessee; or (ii) if such payments are received with respect to any loss of or damage to the Equipment other than an Event of Loss, such payments shall, unless a Default or Event of Default shall have occurred and be continuing, be paid over to Lessee to reimburse Lessee for its payment of the costs and expenses incurred by Lessee in replacing or restoring pursuant to Subsection 15(a) hereof the part or parts of the Equipment which suffered such loss or damage.
- General Indemnity. Except with respect to Impositions subject to specific provisions of Section 10 hereof and except with respect to residual value subject to specific provisions of Section 25 hereof, Lessee assumes liability for, and shall indemnify, protect, save and keep harmless Lessor and its agents, servants, officers, directors, employees, attorneys, affiliates, successors and assigns (each, an "Indemnitee") from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses, including legal expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against any Indemnitee, in any way relating to or arising out of this Lease or the enforcement hereof, or the manufacture, purchase, acceptance, rejection, ownership, possession, use, selection, delivery, lease, operation, condition, sale, return or other disposition of the Equipment or any part or Unit thereof (including, without limitation, latent or other defects, whether or not discoverable by Lessee or any other person, any claim in tort for strict

liability and any claim for patent, trademark or copyright infringement); provided, however, that Lessee shall not be required to indemnify any Indemnitee for loss or liability arising from acts or events which occur after the Equipment has been returned to Lessor in accordance with this Lease, or for loss or liability to the extent directly attributable to the willful misconduct or gross negligence of such Indemnitee. Any payments made by Lessee under this Section 16 shall be made on an after-tax basis. The provisions of this Section 16 shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, however, so long as the BN Sublease is in effect, Lessor will not seek indemnity under this provision if (a) it has a remedy from BN pursuant to Section 10 of the BN Sublease or (b) such loss is as a result of the breach of any provision hereof for which Lessor has agreed herein to look solely to BN for performance.

- 17. Events of Default. The following events shall each constitute an event of default (herein called "Event of Default") under this Lease:
- (a) Lessor fails to receive any payment of rent or other amount owing hereunder within 10 days after the same is due and five (5) days after notice of failure to receive payment is provided by Lessor to Lessee; or
- (b) Lessee shall fail to maintain the insurance required by Section 9 hereof or to perform or observe any of the warranties or covenants contained in Sections 20 or 21 hereof; or
- (c) Lessee shall fail to perform or observe any other warranty, covenant, condition or agreement to be performed or observed by it with respect to this Lease and such failure shall continue unremedied for 30 days after the earlier of (a) the date on which Lessee obtains knowledge of such failure or (b) the date on which notice thereof shall be given by Lessor to Lessee;
- (d) any representation or warranty made by Lessee herein or in any document, certificate or financial or other statement now or hereafter furnished Lessor in connection with his Lease shall prove at any time to have been untrue or misleading in any material respect as of the time when made; or
- (e) Lessee or any affiliate of Lessee shall (i) default in the payment of any obligation for borrowed money, under any lease, under any guarantee or similar accommodation or for the deferred purchase price of property, including interest thereon, beyond the period of grace, if any, provided with respect thereto, or (ii) default in the performance or observance of any other term, condition or agreement contained in any such obligation or in any agreement relating thereto, if as a result of such default, the holder or holders of an obligation (or a

trustee on behalf of such holder or holders) cause any obligation exceeding fifty million dollars (\$50,000,000) to become due prior to its stated maturity or to realize upon any collateral given as security therefor; or

- (f) the entry of a decree or order for relief by a court having jurisdiction in respect of Lessee, adjudging Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking a reorganization, arrangement, adjustment or composition of or in respect of Lessee in an involuntary proceeding or case under the United States bankruptcy laws, as now or hereafter constituted, or any other applicable Federal, state or foreign bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or other similar official) of Lessee or of any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 30 days; or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 30 days; or
- the institution by Lessee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by Lessee to the institution of bankruptcy or insolvency proceedings against it, or the commencement by Lessee of a voluntary proceeding or case under the United States bankruptcy laws, as now or hereafter constituted, or any other applicable Federal, state or foreign bankruptcy, insolvency or other similar law, or the consent by Lessee to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of Lessee or of any substantial part of any of its property, or the making by Lessee of any assignment for the benefit of creditors or the admission by Lessee of any of its inability to pay its debts generally as they become due or its willingness to be adjudicated a bankrupt or the failure of Lessee generally to pay its debts as they become due or the taking of corporate, trust or partnership action by Lessee in furtherance of any of the foregoing.
- 18. Remedies. If an Event of Default described in Subsections 17(f) or (g) above shall occur, then, and in any such event, this Lease shall automatically, without any notice or other action by Lessor, be deemed to be in default, and if any other Event of Default shall occur and be continuing, then, and in any such event, Lessor may, at its option, declare this Lease to be in default by providing notice thereof to Lessee; and at any time after this Lease shall be deemed to be in default pursuant to this sentence or be declared to be in default, Lessor may do any one or more of the following with respect to all of the Equipment or any part thereof as Lessor in

its sole discretion shall elect, to the extent permitted by applicable law then in effect:

- (a) demand that Lessee, and Lessee shall at its expense upon such demand, return the Equipment promptly to Lessor at such place in the continental United States of America as Lessor shall specify, or Lessor, at its option, may enter upon any property where any Unit is located and take immediate possession of the Equipment and remove the same by summary proceedings or otherwise, all without liability for or by reason of such entry or taking of possession, whether for the restoration of damage of property caused by such taking or otherwise;
- (b) sell any or all of the Equipment at public or private sale, as Lessor may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle the Equipment as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto;
- (c) by written notice to Lessee specifying a payment date, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty, all accrued and unpaid rent for the Equipment due on all Rent Payment Dates up to and including the payment date specified in such notice plus an amount (together with interest on such amount at the Late Charge Rate, from the payment date specified in such notice to the date of actual payment) equal to the excess, if any, of the Stipulated Loss Value of the Equipment as of the payment date specified in such notice over the Fair Market Sale Value of the Equipment as of such date;
- (d) by written notice to Lessee specifying a payment date, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty, all accrued and unpaid rent for the Equipment due on all Rent Payment Dates up to and including the payment date specified in such notice, plus an amount (together with interest on such amount at the Late Charge Rate, from the payment date specified in such notice to the date of actual payment) equal to the Stipulated Loss Value for the Equipment computed as of the payment date specified in such notice; and upon such payment of liquidated damages and the payment of all other amounts then due hereunder, Lessor shall proceed to exercise its best efforts promptly to sell the Equipment and shall pay over to Lessee the net proceeds of such sale (after deducting from such proceeds all costs and expenses whatsoever incurred by Lessor in connection therewith and all other amounts which may become payable to Lessor) up to the amount of the Stipulated Loss Value actually paid;

(e) Lessor may exercise any other right or remedy which may be available to it under applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to terminate this Lease.

In addition, Lessee shall be liable for any and all unpaid rent and other amounts due hereunder before or during the exercise of any of the foregoing remedies and for all legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the placing of the Equipment in the condition required by Section 11 hereof.

NO REMEDY REFERRED TO IN THIS SECTION 18 IS INTENDED TO BE EXCLUSIVE BUT EACH SHALL BE CUMULATIVE AND IN ADDITION TO ANY OTHER REMEDY REFERRED TO HEREIN OR OTHERWISE AVAILABLE TO LESSOR AT LAW OR IN EQUITY; and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other remedies. No express or implied Waiver by Lessor of an Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

- 19. Lessor's Right to Perform. If Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein, Lessor may itself make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Late Charge Rate, shall be deemed to be additional rent, payable by Lessee on demand.
- 20. Assignment or Sublease. Except as permitted in Section 8 hereof, and except with regard to any action Lessee may have against Lessor under Section 25 as a result of Lessor's Liens, Lessee will not, without the prior written consent of Lessor, assign this Lease or any interest herein or sublease or otherwise transfer its interest in any of the Equipment, and any attempted assignment, sublease or other transfer by Lessee in violation of these provisions shall be void. However, Lessee may assign its interest hereunder to the purchaser of its Freight Car Division so long as such purchaser assumes certain obligations hereunder. No such assignment or assumption, however, will release Lessee from its obligations hereunder. Lessor will not, without the prior written consent of Lessee, assign this Lease or any interest therein.
- 21. No Changes in Lessee. Lessee will not (a) liquidate or dissolve; or (b) sell, transfer or otherwise dispose of all or a substantial part of its assets; or (c) without thirty (30) days prior written notice to Lessor, change its name or its chief executive office.

22. Further Assurances: Financial Information: Reports.

- (a) Lessee will, at its own expense, promptly and duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time request in order to more effectively carry out the intent and purpose of this Lease and to establish and protect the rights, interests and remedies created or intended to be created in favor of Lessor hereunder. To the extent permitted by applicable law, Lessee hereby authorizes Lessor to file any financing statements and memoranda without the signature of Lessee. Lessee will also provide such information as Lessor may reasonably require from Lessee to enable Lessor to fulfill all of its tax filing obligations.
- (b) Lessee will qualify to do business, and remain qualified and in good standing, in each jurisdiction in which the nature of its activities from time to time may require.
- (c) Lessee will furnish or cause to be furnished to Lessor the following reports: (i) as soon as available, but in any event not later than 120 days after the end of each fiscal year of the relevant entity, a consolidated balance sheet of Lessee as at the end of such fiscal year, and consolidated statements of income and consolidated statements of cash flow of Lessee for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and audited and certified by certified public accountants acceptable to Lessor; (ii) as soon as available, but in any event not later than 90 days after the end of each of the first three quarterly periods of each fiscal year of the relevant entity, consolidated balance sheets of Lessee as at the end of such quarterly period and consolidated statements of income of Lessee for such quarterly period and for the portion of the fiscal year then ended, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and certified by the chief financial officer of Lessee; (iii) promptly, such additional financial and other information of Lessee, as Lessor may from time to time reasonably request; and (iv) on or before April 1 in each year a report executed by an officer of Lessee certifying the identity of each Unit by running mark and number, the condition of such Unit, the Sublease to which such Unit is subject, the commodity such Unit is transporting, whether or not a Default has occurred under the Lease, that all taxes imposed and due on each Unit have been paid in full, and such other information as Lessor may reasonably request. So long as Lessee prepares and files forms 10K and 10Q with the United States Securities and Exchange Commission, the provision of such reports shall satisfy clauses (i) and (ii) of this Section 23(c).

- Recording. Lessee, at its own expense, will cause this Lease and all supplements and amendments to this Lease to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303. Lessee, at its own expense, will further cause this Lease and/or appropriate financing statements to be filed and recorded in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Pennsylvania and with the prothonotary of the countries in which Bethlehem and Johnstown are located (and, if Lessee changes its chief place of business, in any other state) in the same manner as if Lessor's interest in this Lease represented a security interest and in any jurisdiction where filing is necessary or requested by Lessor. Lessee in addition will from time to time do and perform any act or execute, acknowledge and deliver to Lessor any and all further instruments required by law or any additional documents reasonably requested by Lessor for the purpose of proper protection, to their satisfaction, of its interest in the Equipment, or for the purpose of carrying out the intention of this Lease. This Lease shall be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303 prior to the delivery and acceptance hereunder of any Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all instruments required by the law of any jurisdiction in which use of any Unit may occur or as requested by the Lessor for the purpose of proper protection of the title of Lessor and of fully carrying out and effectuating this Lease and the intent hereof.
- 24. Notices. Any notice required or permitted to be given by either party hereto to the other shall be in writing, and any such notice shall become effective upon receipt by facsimile transmission, upon personal delivery thereof, 24 hours following delivery to or deposit with a recognized overnight delivery service or three days after the date on which it shall have been deposited in the United States mail with return receipt requested, addressed as follows:

(i) if to Lessor, at

THE CIT GROUP/EQUIPMENT FINANCING, INC. 1400 Renaissance Drive Park Ridge, Illinois 60068 Attention: Vice President-Credit Facsimile No.: (708) 390-6755

with a copy to

THE CIT GROUP/ EQUIPMENT FINANCING, INC. 270 Park Avenue
New York, New York 10017
Attention: Senior Vice President-Credit
Facsimile No.: (212) 270-6852

(ii) if to Lessee, at

BETHLEHEM STEEL CORPORATION Bethlehem, Pennsylvania 18016 Attention: Treasurer Facsimile No.: (215) 694-1258

25. Residual Value Guaranty.

- (a) Lessee guaranties to Lessor that upon a sale of the Equipment after the expiration of the initial term of the BN Sublease and at or prior to the expiration of the Lease Term, Lessor's net proceeds of sale will be not less than the Unamortized Balance of Lessor's Cost of each Unit. Lessor's remedies with respect to such guaranty will be limited to those provided in this Section 25.
- (b) If Lessor proposes to sell any of the Units in not less than train set quantities (train set quantities for coalporter cars are 120 and for quick dump cars are 115, less any cars destroyed) after the expiration of the initial term of the BN Sublease within the Lease Term and Lessor has received a bona fide offer from an unrelated third party to purchase such Units for less than the Unamortized Balance or proposes to sell such Units at a commercially reasonable auction sale without reserve (with only qualified bidders), Lessor will provide notice to Lessee of such fact, which notice will contain a description of the Units to be sold, the net proceeds expected to be realized (if known), the then Unamortized Balance and the date of such proposed sale. Lessee will have the option, exercisable within thirty (30) days of Lessor's notice to either (i) purchase all of the Units described in such notice free and clear of Lessor's Liens or (ii) pay to Lessor, concurrently with the closing date of the proposed sale the amount by which the net proceeds realized by Lessor is less than the Unamortized Balance. Failure of Lessee to elect either option within such time period shall be deemed the election of option (ii), but will not in itself disqualify Lessee from bidding at auction. If option (i) is elected, closing will occur on or before the last day of Lease Term. Upon sale or lease of the Equipment by Lessor following expiration of the term of the BN Sublease, this Lease shall terminate. Notwithstanding any provision of this Section 25 to the contrary, in the event that no unrelated third parties offer to purchase such Units, no qualified bidders bid on such Units, or Lessee does not purchase all of such Units, pursuant to the terms of this Section 25(b), and any or all of the Units are not sold pursuant to the terms of this Section 25(b), Lessee agrees that Lessee shall purchase the Units from Lessor for an amount equal to (X) the Unamortized Balance for each of the Units remaining unsold, plus (Y) the Lessor's out of pocket costs and expenses (including reasonable attorneys' fees) relating to the Lessor's attempted sale of such unsold Units, if any.

- (c) If Lessor disposes of any of the Units during the Lease Term and receives Total Consideration in excess of the Unamortized Balance, Lessor will pay to Lessee the lesser of (i) the total scheduled rent under the Lease paid by Lessee after the expiration of the term of the BN Sublease, reduced by rent earned by the Equipment pursuant to any Subleases during such period (the "Lease Loss") or (ii) 50% of the amount by which Total Consideration received by Lessor for such Units exceeds the Unamortized Balance multiplied by a fraction, the numerator of which shall be the Lease Loss and the denominator of which shall be the sum of the Lease Loss plus \$119,040.05.
- Identification Marks. Lessee will cause each Unit to be kept marked and numbered with the identifying mark and number set forth in the applicable Supplement. Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such number shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. Lessee will not change or permit to be changed the identifying mark or number of any Unit unless and until (i) a statement of new mark and/or number or numbers to be substituted therefor shall have been filed, recorded and deposited by Lessee in all public offices where this Lease (or notice hereof) shall have been filed, recorded and (ii) Lessee shall have furnished Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect Lessor's interests in such Units and no additional filing, recording, deposit or giving of notice with or to any other Federal, state, provincial or local government or agency thereof is necessary to protect the interests of the Lessor in such Units. During the Lease Term, Lessee will not alter, deface, cover or remove such markings without the prior consent of Lessor.
- 27. <u>Conditions Precedent</u>. Lessor shall not be obligated to lease any Unit to Lessee hereunder unless on the Commencement Date for such Unit:
- (a) Lessor shall have received evidence satisfactory to it of authority of Lessee to execute, deliver and perform this Lease and all documents in connection herewith;
- (b) Lessor shall have received an incumbency and signature certificate of Lessee dated the date of the first Supplement and in form and substance satisfactory to Lessor, setting forth the names and signatures of each officer of Lessee authorized to sign this Lease, the Supplement and all other instruments and documents relating thereto, which certificate may be relied on by Lessor until it receives written notice to the contrary;
- (c) Lessor shall have received from Lessee the Collateral Assignment and Security Agreement in form and substance satisfactory to Lessor and suitable for filing with the ICC

together with the consents and attornment agreements relating thereto from BN and TLC;

- (d) Lessor shall have received the original of the BN Sublease the BN Service Agreement, the BN acceptance certificate and the Service Subcontract;
- (e) (i) Lessor shall have received an opinion of counsel for Lessee satisfactory to Lessor, dated the date of the first Supplement and in form and substance satisfactory to Lessor, to the same effect as clauses (a) through (e), inclusive and clause (g), of Section 7 hereof and as to such other matters as Lessor may reasonably request;
- (ii) Lessor and Lessee shall have received an opinion of in-house counsel for TLC as to matters contained in the Service Subcontract and as to authority for, and enforceability of, the Service Subcontract in form and substance satisfactory to Lessor and Lessee;
- (iii) Lessor shall have received an opinion of counsel from special ICC counsel relating to ICC lien and recording issues in form and substance satisfactory to Lessor;
- (f) Lessor shall have received evidence satisfactory to it as to the due compliance by Lessee with the provisions regarding insurance contained in Section 9 hereof;
- (g) Lessor shall have received good and marketable title to such Equipment, free and clear of Liens other than this Lease and all such Equipment shall be satisfactory to Lessor in its sole discretion;
- (h) Lessor shall have received evidence satisfactory to it as to the proper calculation of the amount of Lessor's Cost of such Units and shall be satisfied that all amounts included in Lessor's Cost have been paid in full;
- (i) Such Uniform Commercial Code financial statements and other documents with respect to the Units as Lessor shall deem necessary or desirable in order to perfect and protect its interests therein shall have been duly executed and filed in such public offices as Lessor shall direct;
- (j) All representations and warranties of Lessee and all other parties contained herein or in any document or certificate furnished Lessor in connection herewith shall be true and correct with the same force and effect as if made on and as of such date; no Event of Default or Default shall be in existence;
- (k) In the sole judgment of Lessor, there shall have been no material adverse change in the business, financial condition or operations of Lessee, BN, or TLC;

- All proceedings to be taken in connection with the transactions contemplated by this Lease, and all documents incidental thereto, shall be satisfactory in form and substance to Lessor and its counsel;
- (m) Lessor shall have received from Lessee, in form and substance satisfactory to Lessor, such other documents and information as Lessor shall reasonably request;
- (n) Lessor shall have received, reviewed and approved in its sole discretion the most recent financial statements of Lessee, TLC and BN;
- All legal matters in connection with the transactions contemplated by this Lease shall be satisfactory to Lessor's counsel;
- Lessor shall have received a paid invoice and Bill of Sale from the manufacturer of the Units;
- (q) Lessor shall have received a CIT acceptance certificate and appraisal report relating to the Equipment in form and substance satisfactory to Lessor;
- (r) satisfactory physical inspection of the Units by Lessor.
- Security. The obligations of Lessee under this Lease are secured by an Assignment and Security Agreement under which the Subleases and all rents due thereunder and Lessee's interests under the BN Service Agreement and the Service Subcontract are assigned to Lessor as security.
- 29. Limitation on Lessee Liability. So long as the BN Sublease is in effect, Lessor shall look solely to BN and not to Lessee for the performance of Lessee's obligations under the following sections, and Lessee hereby assigns to Lessor its rights under the BN Sublease with respect thereto, and Lessor shall seek its remedies directly from BN:
 - (a) Section 6 (Return)
 - (b) Section 9 (Insurance)
 - (c) Section 11 (Compliance with Laws; Operation and Maintenance; Additions)
 - (d) Section 15(a) (Loss or Damage)
 - (e) Section 26 (Identification Marks)
- Nondisturbance. In the event that BN is in compliance with all terms and conditions of the BN Sublease, Lessor shall recognize the BN Sublease and shall not disturb BN's use of the Equipment notwithstanding any termination or expiration of the Lease Term hereunder.

31. Miscellaneous.

- (a) Miscellaneous. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.
- NO TERM OR PROVISION OF THIS LEASE Amendment; Waiver. MAY BE CHANGED, WAIVED, DISCHARGED OR TERMINATED ORALLY, BUT ONLY BY AN INSTRUMENT IN WRITING SIGNED BY THE PARTY AGAINST WHICH THE ENFORCEMENT OF THE CHANGE, WAIVER, DISCHARGE OR TERMINATION IS SOUGHT. No delay or failure on the part of Lessor to exercise any power or right hereunder shall operate as a waiver hereof, nor as an acquiescence in any default, nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. After the occurrence of any Default or Event of Default, the acceptance by Lessor of any payment of rent or other amount owed pursuant hereto shall not constitute a waiver by Lessor of such Default or Event of Default, regardless of Lessor's knowledge or lack of knowledge thereof at the time of acceptance of any such payment, and shall not constitute a restatement of this Lease if the Lease shall have been declared in default by Lessor pursuant to Section 18 hereof or otherwise, unless Lessor shall have agreed in writing to reinstate the Lease and to waive the Default or Event of Default.
- (c) <u>Fees and Expenses</u>. Lessor and Lessee shall each pay its own expenses pursuant to Exhibit F attached hereto in connection with the preparation, execution and delivery of this Lease and related documents.
- (d) Entire Agreement. This Lease and its schedules and exhibits and the agreements referred to herein contain the full, final and exclusive statement of the agreement between Lessor and Lessee relating to the lease of the Equipment.
- (e) <u>Successors and Assigns</u>. This Lease and the covenants and agreements contained herein shall be binding upon, and inure to the benefit of, Lessor and its successors and assigns and Lessee and, to the extent permitted by Section 20 hereof, its successors and assigns.
- (f) <u>Captions</u>. The headings of the Sections are for convenience of reference only, are not a part of this Lease and

shall not be deemed to affect the meaning or construction of any of the provisions hereof.

- (g) Execution in Counterparts. This Lease may be executed by the parties hereto in any number of separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.
- (h) GOVERNING LAW. THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.
- JURISDICTION. LESSEE HEREBY IRREVOCABLY CONSENTS AND (i) AGREES THAT ANY LEGAL ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR IN ANY WAY IN CONNECTION WITH THIS LEASE MAY BE INSTITUTED OR BROUGHT IN THE COURTS OF THE STATE OF NEW YORK, IN THE COUNTY OF NEW YORK, OR THE UNITED STATES COURTS FOR THE SOUTHERN DISTRICT OF NEW YORK, AS LESSOR MAY ELECT, AND BY EXECUTION AND DELIVERY OF THIS LEASE, LESSEE UPON PROPER SERVICE OF PROCESS HEREBY IRREVOCABLY ACCEPTS AND SUBMITS TO, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF ANY SUCH COURT, AND TO ALL PROCEEDINGS IN SUCH COURTS. NOTHING IN THIS LEASE SHALL AFFECT THE RIGHT TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR LIMIT THE RIGHT OF LESSOR TO BRING ACTIONS, SUITS OR PROCEEDINGS IN THE COURT OF ANY OTHER JURISDICTION. LESSEE FURTHER AGREES THAT FINAL JUDGMENT AGAINST IT IN ANY SUCH LEGAL ACTION, SUIT OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION, WITHIN OR OUTSIDE THE UNITED STATES OF AMERICA, BY SUIT ON THE JUDGMENT, A CERTIFIED OR EXEMPLIFIED COPY OF WHICH SHALL BE CONCLUSIVE EVIDENCE OF THE FACT AND THE AMOUNT OF LIABILITY.
- 32. Authorization to Date, Complete Blanks and Correct Errors. Lessee hereby irrevocably authorizes Lessor and Lessor's agents, representatives and employees to insert the Commencement Date hereto and to complete any blank spaces contained in this Lease or in any documents relating hereto.

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Lease to be duly executed as of the day and year first above written.

LESSOR:

THE CIT GROUP/EQUIPMENT FINANCING, INC.

y: Muk___

Title: VICE PRESIDENT

LESSEE:

BETHLEHEM STEEL CORPORATION

By: a. M. Welly

Title: Vice President and Treasurer

By: Mordan J.

Title: Senior Vice President

State of	Illinois)) ss.				
County of	Cook)				
On :	this 9th	day of Aug	<u>ust</u> , 1991, befo	re me		
personally appo	earedF	Paul A. Lechner		, to		
he is a Vice	e President	of TH	me duly sworn, did E CIT GROUP/EQUIPM	MENT .		
FINANCING, INC	., that s	said instrume:	nt was signed on l	pehalf of		
acknowledged the	hat the e	execution of	s Board of Directo the foregoing inst			
the free act a	nd deed o	of the corpor	ation.			
*********	·····	Υ.				
" OFFICIAL JULIANA CAROL	. MoFADDEN	}	Notary Pub	Halley		
NOTARY PUBLIC, STA	TE OF HILINOIS	{	Notary Pub	Xic /		
My commission	~~~~	₹		, ;;		
My Commission	exhires:	March 4, 1992		i € √		
State of)) ss.				
County of)				
On	thic	day of	100	l hefore		
me personally	appeared		, 199	and		
being by me du	ly sworn		to me personally they are a			
and		of BETH	LEHEM STEEL CORPO	RATION,		
corporation by	authori	ty of its Boa	rd of Directors,	and he		
acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.						
			Notary Pub	olic		

My commission expires:

State of County of)) ss.)		
personally appea me personally known he is a FINANCING, INC., said corporation acknowledged tha	redown, who, being h of that said instru by authority of	, 1991, before me duly sworn, di THE CIT GROUP/EQUIP ment was signed on its Board of Direct of the foregoing insporation.	, to d say that MENT behalf of ors, and he
		Notary Pul	blic
My commission ex	pires:		The state of the s
Commonwealth of State x of County of Lehigh))ss.		
being by me duly and Senior Vice that said instru corporation by a acknowledged tha	sworn, did say of BI ment was signed authority of its I	Lugust, 199 Ller, to me personally that they are a Vice ETHLEHEM STEEL CORPORATE and sealed on behalf Board of Directors, of the foregoing instruction.	known, who, te President and DRATION, Treasurer f of said and he
My compission ex	nires:	I the M. Var. Notary Pu	plic

NOTARIAL SEAL Ethel H. Vary, Notary Public City of Bethlehem, Lehigh County, Pa. My Commission Expires July 17, 1994

Exhibits and Schedules

Exhibit A Equipment Schedule

Exhibit B Form of Equipment Supplement

and Acceptance Certificate
Schedule 1 Units subject to Supplement

Schedule 2 Stipulated Loss Values

Exhibit C BN Sublease

Exhibit D BN Service Agreement

Exhibit E Service Subcontract

Exhibit F Letter Agreement

EXHIBIT A

Equipment Schedule

Equipment Description	AAR Designation	Running Nos.
230-Bethlehem Freight Car Division Aluminum Open quick dump ("Rapid Discharge") coal hopper cars with rotary coupler and 3,870 cubic foot capacity	K341	MCHX 30815- 31044
240-Bethlehem Freight Car Division Aluminum BethGon 100 ton capacity, 4000 cubic foot, open top coal gondolas with rotary coupler	J312	MCHX 30575- 30814

EXHIBIT B

EQUIPMENT SUPPLEMENT AND ACCEPTANCE CERTIFICATE

[REMOVED FOR RECORDING]

EXHIBIT C

BN SUBLEASE

[REMOVED FOR RECORDING]

EXHIBIT D

BN SERVICE AGREEMENT [REMOVED FOR RECORDING]

EXHIBIT E

SERVICE SUBCONTRACT
[REMOVED FOR RECORDING]

EXHIBIT F

LETTER AGREEMENT

[REMOVED FOR RECORDING]